

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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JUN 19 1997

In the Matter of)

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)
) Policies and Rules Pertaining to
) Local Exchange Carrier "Freezes"
) on Consumer Choices of Primary
) Local Exchange or Interexchange
) Carriers)

RM-9085

CCB/CPD 97-19

Federal Communications Commission
Office of Secretary

AMERITECH REPLY

The Ameritech Operating Companies (Ameritech) respectfully submit this reply to comments on MCI's petition for rulemaking in the above-captioned proceeding. In its Comments, Ameritech demonstrated that, despite the Commission's best efforts, slamming continues to be a pervasive form of consumer fraud. Indeed, Ameritech showed that, with the advent of intraLATA toll presubscription, the incidence of slamming is accelerating rapidly and that slamming is reaching endemic proportions in the intraLATA toll arena. Noting that so-called "pic freezes" (more aptly termed "slamming protection") can be an effective way for consumers to protect themselves against slamming, Ameritech urged the Commission to reject proposals that would limit the availability of slamming protection or compromise its effectiveness. At the same time, Ameritech stated that it does not oppose rules that are designed to ensure that slamming protection programs are marketed and implemented in a manner that benefits consumers and is consistent with fair competition.

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In this Reply, Ameritech addresses three issues only. First, Ameritech addresses comments that ask the Commission to prohibit local exchange carriers (LECs) from offering or marketing slamming protection in connection with intraLATA toll service. Second, Ameritech addresses a Sprint proposal under which LECs would be required to designate certain personnel separate from those assigned to the sales and marketing functions of the LEC to handle all requests by customers to implement or remove a freeze. Third, Ameritech addresses a proposal by Sprint and AT&T to require LECs to obtain slamming protection instructions from customers on a market-by-market basis.¹

A. **THE COMMISSION SHOULD NOT DENY CONSUMERS THE RIGHT TO PROTECT THEIR INTRALATA TOLL SERVICE FROM SLAMMING.**

Several interexchange carriers (IXCs) ask the Commission to prohibit LECs from offering or marketing slamming protection for varying periods of time in connection with intraLATA toll service.² They maintain that slamming

¹ In its Comments opposing MCI's proposal that LECs be required to accept third party verification, in lieu of direct customer authorization, as a basis for removing slamming protection, Ameritech stated that it is developing a procedure whereby customers may lift their slamming protection simply by calling a 24-hour number. This is not entirely correct. Although in Illinois, the option will be available on a 24-hour basis (with somewhat shorter hours on Sunday), in Ameritech's other states the service will be available between the hours of 6:00 AM to 12:00 midnight, Monday through Friday, and from 7:00 AM to 7:00 PM on Saturdays. Since carriers are not likely to engage in telemarketing outside these hours, this service should more than meet the needs of the industry for easy, consumer-friendly, but secure slamming protection removal.

² See CompTel Comments at 6 (FCC should prohibit incumbent LECs (ILECs) from soliciting slamming protection for local exchange and intraLATA services during the first six months after competition is introduced for such services); AT&T Comments at 6 (ILECs should be prohibited from affirmatively marketing intraLATA carrier selection for one year after the

protection of intraLATA toll customers is inherently anticompetitive, “is unnecessary for any legitimate purpose, and is only being used to shield the incumbent’s customers from competition.”³ According to WorldCom, “even if the theoretical opportunity for slamming develops . . . there is no way the ILECs will ever allow slamming of their customers to happen.”⁴

Ameritech strongly opposes these proposals. As Ameritech demonstrated in its Comments, it is pro-competitive, not anticompetitive, to protect consumers against what has become a pervasive form of consumer fraud. Thus, the IXC’s claim that slamming protection for intraLATA toll customers is inherently anticompetitive is wrong.

To be sure, slamming protection programs can be implemented in ways that are anticompetitive, but, even here, the IXC’s claims – at least with regard to Ameritech’s slamming protection program - are wildly exaggerated.⁵ For example, several IXCs accuse Ameritech of engaging in “blatantly anticompetitive” activity. This “blatantly anticompetitive” activity to which they refer consisted of a bill insert designed to inform consumers of the

ILEC has fully implemented intraLATA toll dialing parity in its service territory in a state; ILEC should be prohibited from implementing slamming protection for local exchange service so long as they are classified as dominant); TRA Comments at 7 (Commission should prohibit slamming protection altogether). See also WorldCom Comments at 2-4.

³ WorldCom Comments at 4. See also CompTel Comments at 3; TRA Comments at 7.

⁴ Id.

⁵ It is, to say the least, ironic that the very industry that made, and continues to make, slamming protection a necessity because of its continuing fraudulent practices, has purported to place itself on “the high road” in this proceeding, while demonizing the industry sector that devised a means for consumers to protect themselves against these practices

availability of slamming protection. According to IXC's, this initiative was anticompetitive because it took place at about the time some states required Ameritech to implement intraLATA toll dialing parity. Aside from the fact that this also happened to be the time that the need for greater use of slamming protection became readily apparent as the incidence of slamming began skyrocketing, Ameritech does not believe that educating consumers on how to protect themselves against fraud is properly characterized as anticompetitive.

IXC's argue, further, that this bill insert was deceptive. They base this claim on the fact that the insert referred to unauthorized changes to "long distance service," although Ameritech placed slamming protection on both the inter and intraLATA accounts of customers who returned the form. What these carriers fail to point out is that this same insert (a copy of which is attached as Exhibit A) also described slamming as "switching consumers' long-distance or other telecommunications service without their knowledge or consent" (emphasis added). They also neglect to mention that the insert then informed customers that if they returned the enclosed form, "Ameritech will not permit any changes to your account unless you notify us by phone or in writing . . . " (emphasis added). The insert also provided a telephone number that customers could use if they had any questions about slamming.

Even assuming, arguendo, that Ameritech should have been more explicit in its description of intraLATA toll service,⁶ this insert hardly amounts to the flagrant consumer abuse it is made out to be in some IXC comments. More importantly, no IXC mentions that Ameritech no longer uses this slamming protection form, and none of them suggests that the form that Ameritech currently uses is, in any way, misleading or inappropriate.⁷

The inflated rhetoric used by IXCs to describe the Ameritech bill insert is undoubtedly designed to further the IXCs' real agenda here: to convince the Commission to establish a skewed regulatory framework in which slamming protection is available to IXC customers, but not to LEC intraLATA toll customers. The Commission should not be fooled into adopting the IXC proposals to that end. As Ameritech showed in its comments, intraLATA toll slamming is already occurring at rates that threaten to dwarf interLATA toll slamming. Indeed, despite the fact that Ameritech has not yet implemented intraLATA toll dialing parity in two of its five states, 40% of consumer slamming complaints made to Ameritech involve intraLATA toll slamming.⁸ Moreover, an Ameritech survey found that half of all customers whose intraLATA toll carrier had been changed were unaware of the change and did not authorize it.

⁶ Sprint and CompTel allege that Ameritech froze the local exchange service accounts of customers who returned the slamming protection form included with the bill insert. This is incorrect. Ameritech has never offered slamming protection for local exchange services.

⁷ Ameritech attaches hereto as Exhibit B a copy of the slamming protection form currently used by Ameritech.

⁸ See Ameritech Comments at 5-6.

The reason intraLATA toll customers are particularly vulnerable to slamming is self-evident: most customers do not fully understand the difference between long-distance service and intraLATA toll service, and they are therefore easy prey for IXC marketers who exploit this confusion. It is imperative, therefore, that these customers continue to be able to protect themselves against slamming, just like other customers. Any concerns that LECs will misuse slamming protection can be more than adequately addressed by carefully crafted rules that protect consumers while preventing anticompetitive conduct.

Just as the Commission should reject proposals to intraLATA toll customers from obtaining slamming protection, it should reject AT&T's proposal to prohibit LECs from "affirmatively marketing" intraLATA toll slamming protection.⁹ Aside from the fact that, for the reasons discussed above, any such prohibition would be bad policy, it would also violate the First Amendment rights of LECs and consumers. As the Commission recently noted: "In the advertising context, the Supreme Court has held that the First Amendment protects 'the dissemination of truthful and nonmisleading commercial messages about lawful products and services.'"¹⁰ Since, under AT&T's proposal, LECs

⁹ As noted, AT&T also suggests that LECs be prohibited from implementing slamming protection for local exchange service so long as they remain classified as "dominant carriers." Considering that AT&T asked the Commission to require LECs to offer slamming protection to, inter alia, AT&T's long-distance customers five years before AT&T was declared nondominant, AT&T's chutzpah in suggesting this prohibition is remarkable. Indeed, AT&T does not even pretend to offer a plausible rationale - other than its own self-interest - for this proposal.

¹⁰ Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act, as amended, First Report and Order, CC Docket No. 96-149, FCC 96-489,

would not be prohibited from providing slamming protection to any customer who requests it, LECs cannot constitutionally be prohibited from marketing that service in a non-misleading fashion.

B. THE COMMISSION SHOULD REJECT SPRINT'S PROPOSAL TO IMPOSE ADDITIONAL SEPARATION REQUIREMENTS ON LECs.

Sprint asks the Commission to impose what, essentially, amounts to additional structural separation requirements on LECs. Specifically, it asks the Commission to require LECs to "designate certain personnel separate from those assigned to the sales and marketing functions of the LEC to handle all requests by customers to implement or remove a freeze."¹¹ This separation requirement is unnecessary at this time and should be rejected. Ameritech does not oppose a rule that would prohibit LECs from marketing services to customers who contact the LEC to install or remove slamming protection. Ameritech does not currently market services to customers in such circumstances, nor does it intend to begin doing so.¹² Ameritech also does not oppose reasonable nondiscrimination requirements that would apply to the implementation or removal of slamming protection, although the 1996 Act and Commission rules already prohibit such

released December 24, 1996 at para. 279, quoting 44 Liquormart, Inc. v. Rhode Island, 116 S.Ct. 1495, 1504 (1996).

¹¹ Sprint Comments at 2-3.

¹² Indeed, Ameritech's "methods and procedures" specifically instruct service representatives that, once a customer has decided to use another carrier, "no further promotion of Ameritech as a provider of intraLATA service is appropriate."

discrimination. Indeed, Ameritech does not oppose Sprint's proposal to transfer administration of slamming protection to a neutral third party, so long as all members of the industry share the costs associated with that endeavor, including both the initial start-up costs and the ongoing costs of using a third party to administer slamming protection. Ameritech does, however, oppose the imposition of new structural separation requirements, particularly in the absence of any evidence that such requirements are necessary and that LECs would not adhere to whatever rules the Commission establishes. Therefore, in lieu of imposing structural separation requirements at this time, the Commission adopt rules designed to protect against anticompetitive behavior in the implementation and removal of slamming protection. In the unlikely event these rules prove ineffective, the Commission can consider other measures, including, if necessary, structural separation requirements, in the future.

C. THE COMMISSION SHOULD NOT REQUIRE THAT SLAMMING PROTECTION BE IMPLEMENTED ON A MARKET-BY MARKET BASIS

Sprint also proposes to require that customers elect slamming protection on a market-by-market basis. Although Sprint does not make this clear, Ameritech can think of two potential rationales for this proposal: (i) to give customers the option of electing slamming protection for some services but not others; and (ii) to ensure that consumers are not misled as to the scope of their slamming protection. Neither of these rationales is compelling.

The first rationale - giving customers the option of choosing slamming protection for some services, but not others - assumes that customers would want such an option. Ameritech has yet to encounter a customer who sought slamming protection for some of his/her services, but not others. If a customer is concerned about slamming, that customer wants full protection for all of his/her services. Indeed, for this reason, the Minnesota PUC has ruled that long-distance slamming protection should automatically be extended to intraLATA toll service when intraLATA toll dialing parity was implemented in that state.¹³ Similarly, the Public Service Commission of Wisconsin has approved the automatic extension of long-distance slamming protection to intraLATA toll service.¹⁴ Therefore, a requirement that slamming protection be separately obtained for each classification of service would render the customer election process needlessly complicated and confusing.

The second rationale - preventing customer confusion - would be more directly served by a rule that simply requires carriers to explain fully which services would be covered if the customer elects slamming protection. Indeed, because it would be so illogical for a customer to select slamming protection for

¹³ Order, Investigation into IntraLATA Equal Access and Presubscription, Minn. PUC, Dkt. P-999/CI-87-697, 1996 Minn. PUC LEIS 2, *7 (Jan. 12, 1006).

¹⁴ Second Final Order, PSCW Dkt. 6720-T1-111 (Nov. 22, 1995)(approving implementation plan for intraLATA toll presubscription).

part of his/her account, but not the entire account, giving customers that option would likely add to customer confusion, not reduce it.

D. CONCLUSION

As the Commission has recognized, slamming protection is an important consumer protection mechanism. Moreover, it is a mechanism that is becoming increasingly important as the incidence of slamming continues to grow. Despite overblown IXC arguments that slamming protection impedes competition for intraLATA toll services, the fact is that slamming protection does nothing more than confer upon consumers the right to insist that they personally authorize any change to their account. This is pro-competitive, not anticompetitive. To be sure, it is possible for carriers to implement slamming protection in a way that does not serve the interests of consumers or fair competition. Any such problems can be addressed directly through specific rules that regulate how such programs are administered. To deny consumers the benefits of slamming protection altogether, even if only for some services or for a finite period of time, would "throw out the baby with the bath water."

Respectfully Submitted,



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Some phone companies are engaging in a practice commonly known as slamming: switching consumers' long-distance or other telecommunications service without their knowledge or consent. This is an illegal practice on which the Federal Communications Commission has begun to crack down.

While Ameritech can do nothing to resolve the problem *after* your long-distance service has been slammed, we can easily protect you *before* it happens.

Simply complete the information below and return this form with your bill payment to ensure that slamming never happens to you. Upon receipt, Ameritech will not permit any changes to your account unless you notify us by phone or in writing of your desire to make changes. There is no charge to you for this service.

If you have any questions about slamming or your current phone service, please call us at 1-800-244-4444.

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SIGNATURE

.....
NAME

.....
ADDRESS

.....
CITY, STATE, ZIP

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.....
PHONE NUMBER



YOUR LINK TO BETTER COMMUNICATION

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It's as easy as calling 1-800-SLAM-920.

Some phone companies are switching customers' local toll and/or long-distance service providers without their consent. You might not even be aware it's happened unless you notice the charges from the unauthorized provider on your phone bill. It's called slamming. It's illegal and it can happen to anyone. You can help to prevent unauthorized changes to your account with Ameritech® Slamming Protection.

Simply call 1-800-SLAM-920 (800-752-6920) or complete the information below, seal and mail to the preprinted address. Upon receipt, Ameritech will not process changes to your phone providers for local toll or long-distance unless you notify us by phone or in writing of your desire to make changes. There is *no charge* to you for this option. (Please note: Ameritech Slamming Protection may not prevent slamming by telephone companies who are service resellers.)

Ameritech thinks consumers should have control over who they choose to service their account. Dialing 1-800-SLAM-920 (800-752-6920) or filling out this card will help you make sure that you do.

Signature _____**Name** _____**Address** _____**City, State, ZIP** _____**Phone Number** _____

If you have any questions about Ameritech Slamming Protection or your current phone service, please call us at 221-4900.

Ameritech.

YOUR LINK TO BETTER COMMUNICATION®

CERTIFICATE OF SERVICE

I, Halley Shoenberg, do hereby certify that a copy of the foregoing Ameritech Comments has been mailed, by first class mail, to the party listed below on this 19th day of June, 1997.

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